# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.18813 of 2017**

======================================================

Shiv Shankar Lal S/o Late Cheddy Lal r/o Quarter No. - B Municipal Colony, Dehri On Sone, PS Dehri, District - Rohtas.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Urban Development Department, Government of Bihar, Patna
2. The Secretary, Urban Development Department, Govt. of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The Executive Officer Nagar Parishad Dehri, Dalmianagar, Dehri-on-Sone, District - Rohtas.

... ... Respondent/s

======================================================

**Appearance :**
For the Petitioner/s : Mr.Brij Bihari Tiwary
For the Respondent/s : Mr.Yogendra Prasad Sinha -Aag7

======================================================

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**
**C.A.V. JUDGMENT**
**Date : 17-10-2019**

1. The present writ petition has been filed seeking a direction upon the respondent- State authorities, especially the Executive Officer, Nagar Parishad, Dehri, Dalmianagar, Dehri On Sone, District-Rohtas to pay to the petitioner, interest @ 18% per annum for the delay caused in making payment of the admitted retiral dues of the petitioner herein, as has been explained at length in a tabular form in paragraph no. (1)(i) of the writ petition.

2. The brief facts of the case are that the petitioner was working as Head Clerk-cum-Accountant with Dehri-

Dalmianagar Municipality and retired on 01.02.1997. It is the case of the petitioner that at the time of retirement, the petitioner was paid the gratuity amount only in part and that too, in the old pay scale. Similarly, he was paid leave encashment and that too, in the old scale. The pay of the petitioner was revised w.e.f. 01.01.1996 and since the petitioner had retired on 01.02.1997, his basic pay was also revised.

3. The petitioner had approached this Court by filing a writ petition for payment of the retiral dues which was disposed off by this Court and on account of non-compliance of the order passed by this Court, the petitioner had to file a contempt petition bearing M.J.C. no. 1905 of 2014, which was disposed off by this Court vide order dated 20.07.2017 with the following observations that,*" In case, the petitioner feels that there is unexplained inordinate delay in settling the claim and he is entitled to interest, liberty shall be granted to the petitioner to claim interest in accordance with law."* It is thereafter that the petitioner has filed the present writ petition for grant of interest upon the delayed payment of retiral dues of the petitioner herein. The

learned counsel for the petitioner has submitted that the petitioner is entitled for interest on the delayed payment of the retiral dues and for this purpose, he has relied upon a judgment rendered by the Division Bench of this Court, reported in ***2010 (3) PLJR 906 (Sudha Kumari vs. Ram Pavitra Singh)***, paragraphs 9 and 10 whereof, are reproduced hereinbelow :-

> *" 9. Consequently when this Court has found that the said application for final withdrawal filed by the respondent writ petitioner was received in the office of the District Superintendent of Education on 6.7.1989, if the said authority had consumed a period of 13 years in forwarding his application, the same cannot enure to the benefit of the appellants by seeking protection under Rule 14 of the Bihar G.P.F. Rules, 1948. It has to be noted here that the writ application of the respondent writ petitioner claiming payment of G.P.F. with up-to-date interest was filed on 13.9.2002 and only thereafter the D.S.E. woke up from his slumber and had forwarded the same to the District Provident Fund Officer on 14.11.2002. This part of the finding of this Court that the application of the respondent writ petitioner in fact was received in the office of the District Superintendent of Education, Patna on 6.7.1989 gets further confirmed from the*

*endorsement made by the Block Education Extension Officer, who on its being sent to him in capacity of the head of the office had issued a certificate on 31.10.2002 that in the last 12 months the respondent writ petitioner was not sanctioned any advance from his G.P.F. account. If the plea of the appellants as projected in the appeal is accepted that the respondent writ petitioner had filed his application on 31.10.2002 there could have been no mention of the date 6.7.1989 on the top of the application and thus, it becomes absolutely clear that only after filing of the writ application on 13.9.2002, the Block Education Extension Officer, Pandarak had put his signature on the said application and thereafter the D.S.E., Patna on 14.11.2002 had recommended for payment to the District Provident Fund Officer, Patna whereafter only such payment was ultimately made by the District Provident Fund Officer on 14.11.2002.*

*10. In the factual premises of this case there would be no need to go into the question of interpretation of Rule 14 of the G.P.F. Rules or to the circulars dated 9.5.1988 and 5.3.2001, inasmuch as the State Government has repeatedly insisted that the delay by the authority in making payment of provident fund would not deprive the employee in getting the benefit of payment of interest. This aspect of the matter in fact has been clarified by the Finance Commissioner of the State of Bihar in his circular dated*

*5.3.2001 while explaining the scope of the earlier circular dated 6th May, 1988 on the subject wherein it has been clearly stipulated that the interest beyond a period of six months will not be paid only in such case where the application was filed after a period of six months. In this context from the reading of the circular dated 5.3.2001 it is quite explicit that if after receipt of the application for final withdrawal of G.P.F. the delay in payment is on account of administrative lapses on the part of the Drawing and Disbursing/sanctioning authority, the interest will be paid upto the date of payment and the amount of interest paid in excess of the period of six months will be recovered from the concerned erring officials."*

The learned counsel for the petitioner has further relied upon a judgment rendered by the Hon'ble Apex Court ***dated 01.08.2014*** passed in ***Civil Appeal no. 7113 of 2014 (D.D. Tewari(D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.),*** paragraphs no. 3 to 6 whereof, are reproduced hereinbelow :-

*3. The appellant was appointed to the post of Line Superintendent on 30.08.1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer-I. During his service, the appellant remained in charge of number of transformers* *after getting issued them from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31.10.2006. The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the rate of 18% on the delayed payments. The learned single Judge has allowed the Writ Petition vide order dated 5.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in the case of* ***State of Kerala & Ors. Vs. M.***

***Padmanabhan Nair****, wherein this Court reiterated its earlier view holding that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. It has adverted to the fact that there is no order passed by the learned single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed.*

*The correctness of the order is under challenge in this appeal before this Court urging various legal grounds. 4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent. 5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in*

*the case in hand.*
*6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed.*

4. *Per contra,* the learned counsel appearing for the respondent no. 4 i.e. the Executive Officer, Nagar parishad, Dehri, Dalmianagar, Dehri On Sone, by referring to the counter affidavit filed in the present case, has submitted that though the State Government revised the pay scale on the recommendation of the fitment committee w.e.f. 01.01.1996 but the benefits were to be actually drawn from 01.04.1997 whereas the petitioner retired on 01.02.1997 itself. It is further submitted that the petitioner has approached this Court after a delay of 16 years without giving any details of his claim and moreover, the *Nagar Parishad* has calculated the admitted dues of the petitioner herein and made all such payment with minimal delay,

which has taken place on account of paucity of fund and delay in disbursement of grant extended by the State Government. It is submitted that the *Nagar Parishad* is dependent on loans and matching grants from the State Government, hence on account of scarcity of funds and for the reasons beyond control of the *Nagar Parishad*, certain delay has taken place in making payment of the retiral dues to the petitioner herein. Lastly, it is submitted that though the petitioner has raised the issue regarding payment of interest on the alleged delay in payment of his retiral dues, earlier, before this Court, both in the writ petition as well as in the contempt petition, however this Court did not pass any positive order in favour of the petitioner herein for payment of interest on the delayed payment of retiral dues. The learned counsel for the respondent-*Nagar Parishad* has relied upon a judgment rendered by the Hon'ble Apex Court, reported in ***2008(8) SCC 648 (Union of India and another v. Tarsem Singh)***, paragraphs no. 7 and 8 whereof, are reproduced hereinbelow :-

> *" 7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and*

*laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.*

> *8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."*

5. I have heard the learned counsel for the parties and I find that the first writ petition filed by the petitioner i.e. ***CWJC no. 1291 of 2013*** was filed for payment of gratuity on revised pay scale w.e.f. 01.01.1996 as well as revised leave encashment, as would be apparent from the order ***dated 02.08.2013*** passed by a co-ordinate Bench of this Court in ***CWJC no. 1291 of 2013***, which is reproduced hereinbelow :-

> *" The petitioner superannuated on 1.2.1997 while working as Head Clerk cum Accountant,Dehri Dalmia Nagar Municipality. He prays for payment of gratuity on revised pay scale w.e.f. 1.1.1996 as well as revised leave encashment. Having considered the facts and circumstances The Executive Officer Nagar Parishad Dehri, Dalmianagar, Dehri-on-Sone, District – Rohtas."*

6. This Court further finds that the petitioner had filed a contempt petition bearing M.J.C. no. 1905 of 2014 for non- compliance of the order ***dated 02.08.2013*** passed in ***CWJC no. 1291 of 2013***, wherein a co-ordinate Bench of this Court by an order ***dated 20.08.2017*** had disposed off the said contempt petition being satisfied with the compliance report of the respondents and had refused to grant any further indulgence in the matter of the petitioner herein. However, the petitioner was granted liberty to claim interest in accordance with law, in case petitioner feels that there is inordinate delay in settling his claim.

7. I have heard the learned counsel for the parties and have perused the materials on record and I find that the submission of the learned counsel appearing for the respondent- Municipality, to the effect that the petitioner has approached this Court after a delay of about 16 years, is misplaced, inasmuch as the table described in paragraph no. 1(i) of the writ petition would show that the differences of pay and differences of G.P.F. amount were paid to the petitioner only on 02.05.2017, whereas the same ought to have been paid on 22.12.1999, hence there has been a delay

of more than 17 years in liquidating the said outstanding dues of the petitioner. As far as the differences of leave encashment and differences of gratuity is concerned, the same were paid on 05.08.2013, whereas the same ought to have been paid on 22.12.1999, hence there has been a delay of about 13 years in payment of the said outstanding dues of the petitioner herein. The petitioner has approached this Court immediately upon having received the differences of pay and differences of G.P.F. on 02.05.2017, by filing the present writ petition on 18.12.2017, hence admittedly there is no delay in preferring the present writ petition. Thus, the judgment relied upon by the learned counsel for the respondents, in the case of ***Tarsem Singh (supra)*** is not applicable in the facts and circumstances of the present case. This Court is of the view that the petitioner is entitled to grant of simple interest @ 6% per annum on the delayed payment of the outstanding retiral dues of the petitioner herein from the date of entitlement till the date of actual payment. The present case is squarely covered by the aforesaid judgments rendered in the case of ***D.D. Tewari(D) (supra) and Ram Pavitra Singh (supra)***. It is needless to state that from the facts and circumstances of the case, it is abundantly clear that the petitioner has been made to run from pillar to post as also has been harassed to bits and only thereafter, he has been able to get his retiral dues and that too, after a long delay of about 17 years, hence the respondent- Municipality does not deserve any sympathy.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present writ petition stands allowed with a direction to the respondent-Municipality to pay interest, as directed hereinabove, within a period of twelve weeks from the date of receipt/ production of a copy of this order.

**(Mohit Kumar Shah, J)**

rinkee/-

| | |
|---|---|
| **AFR/NAFR** | AFR |
| **CAV DATE** | 18.09.2019 |
| **Uploading Date** | 18.10.2019 |
| **Transmission Date** | NA |